

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD) No.1478 of 2003
and CMP No.16062 of 2003

V.Jegannatha Chettiar

... Petitioner

Vs.

1.Kasthuri Ammal
2.Rasilabai

.... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order dated 04.12.2002 passed in E.A.No.138/2002 in E.P.No.478/1997 in O.S.No.392/1996 on the file of the Additional District Munsiff Court, Cuddalore, Cuddalore District.

For Petitioner : M/s.A.Nilaphar
for M/s.R.Meenal

For R1 & R2 : No appearance

ORDER

The instant Civil Revision Petition has been filed by the decree holder, who had obtained a decree against the first respondent for money. The petitioner had filed an Execution Petition to execute the said decree by seeking attachment of the sale of the property owned by the first respondent.

2.Even during the pendency of the suit, the Trial Court had granted an order of attachment of the property in I.A.No.1362 of 1996. While, the Execution Petition was pending and the attachment was in subsistence, a third party, namely, the second respondent in the present CRP, filed an application under Section 47 of the Civil Procedure Code claiming that she is the owner of the property which was attached and that the first respondent is not the present owner.

3.The second respondent claims that she had purchased the property from the first respondent and therefore, there cannot

be an order of attachment against the property. The Execution Application No.86 of 2000 under Section 47 of Civil Procedure Code, seeking to set aside the Execution Petition was filed by the second respondent. In the said Execution Petition, notice was served on the petitioner, but, the petitioner failed to file a counter and the executing Court by its order dated 24.07.2000, set the petitioner ex parte and E.A.No.86 of 2000 was allowed. The petitioner did not file any application seeking to set aside the ex parte order immediately. The petitioner filed an application in E.A.No.138 of 2002 seeking to condone the delay of 575 days in filing an application to set aside the ex parte order dated 24.07.2000 passed by the executing Court in E.A.No.86 of 2000.

4.The reason given in the affidavit by the petitioner for condonation of delay is found in paragraph No.3 of the said affidavit, which is reproduced below:

"3.I fell ill and took treatment at local for more than one month. After that I came to know that I was affected by Jaundice. Because I took treatment both in local treatment and Allopathy treatment. I recovered my health after a long back. My Doctor advised me to take rest for 2 months and advised me to avoid travelling. Then again, I fell into Typhoid fever as my health was already not in good condition. I suffered for more than six months. For the above said reasons I could not attend my case and contact my Counsel in time. My absence is not wanton or careless. I am interested in getting on with the trial of the petition. I have valid grounds in success in application filed by the Respondents. The delay may be condoned."

5.The second respondent has also filed the counter. According to the petitioner, the reason for the delay as extracted in paragraph No.3 of the affidavit is that she was ill and was underdoing treatment for Jaundice for more than a month and she was also advised to take rest for two (2) months after she recovered from Jaundice. The executing Court was not satisfied with the reasons and dismissed the condonation of delay application filed by the petitioner on the ground that the petitioner has not filed any proof to establish that she was ill and was undergoing treatment for Jaundice. Against the dismissal of E.A.No.86 of 2000, the instant CRP has been filed.

6.I heard the submissions of the learned counsel for the petitioner. There is no representation on the side of the second respondent. Even on the earlier occasion, i.e., on 10.01.2018, there was no representation on the side of the

second respondent. Considering the nature of the application, this Court feels no useful purpose would be served if one more adjournment is granted to enable the second respondent to make a submission.

7.The learned counsel for the petitioner drew the attention of this Court to the reasons given in the affidavit seeking condonation of delay and submitted that only due to the medical ailment, the petitioner could not file its counter and defend E.A.No.86 of 2000. The learned counsel for the petitioner also relied upon two Judgments of Hon'ble Supreme Court reported in (1998) 7 SCC 123 in the case of N.Balakrishnan vs. M.Krishnamurthy and in the case of S.Ganesharaju (Dead) Through LRs. and Another vs. Narasamma (Dead) Through LRs. and Others reported in (2013) 11 SCC 341. The learned counsel for the petitioner, referred to paragraph No.12 of the Judgment in (2013) 11 SCC 341, which is reproduced below:

12.The expression "sufficient cause" as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

8.The learned counsel for the petitioner also referred to paragraph Nos. 9, 10 and 11 of the judgement reported in (1998) 7 SCC 123 which are reproduced below:

9.It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

9. As seen from the affidavit filed by the petitioner before the executing Court, the petitioner was 59 years old in the year 2000. Even though, no medical certificate to prove her medical ailment was filed while seeking condonation of delay, the executing Court ought to have taken note of her age and should have accepted the reasons given in the affidavit seeking condonation of delay.

10. The Hon'ble Supreme Court in the decisions relied upon by the learned counsel for the petitioner has clearly held that unless the respondents are able to show malafides, generally as

a normal rule delay should be condoned. Further in the instant case, there is no representation on the side of the respondents to put forward contra arguments, and therefore, this Court will have to believe the statement of the petition.

11. Therefore, this Court of the considered view that the executing Court ought to have allowed the application filed by the petitioner seeking to condone the delay of 575 days in filing an application to set aside the ex parte order passed on 27.04.2000 in E.A.No.138 of 2002 in E.P.No.479 of 1997.

12. Accordingly, the order under challenge of the Additional District Munsiff Court is set aside and the Civil Revision Petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

pam

To

1. The Additional District Munsif,
Cuddalore.

2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.R.Subramanian, Advocate SR.No.3130

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and CMP No.16062 of 2003

SS (CO)
GN (12/03/2018)

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